



**IN THE MALAWI SUPREME COURT OF APPEAL
SITTING AT BLANTYRE**

MSCA MISCELLANEOUS CIVIL APPLICATION NO. 44 OF 2025
(Being High Court Lilongwe District Registry Civil Appeal No 31 of 2024)

BETWEEN

AHL GROUP PLC APPLICANT

AND

MARIE CHITHUMBA RESPONDENT

CORAM: HON. JUSTICE R. MBVUNDULA, J.A., S.C.

P. Tsabola, Counsel for the Applicant

M. Banda, Counsel for the Respondent

M. Mnthunzi, Recording Officer

RULING

Mbvundula, JA, SC:

1. This is this Court's Ruling on an *inter partes* application by the applicant herein for an order to restore a High Court order for stay of execution of a judgment of the Industrial Relations Court (IRC) awarding the respondent compensation for wrongful dismissal, amounting to K34 993 350.00.

2. The respondent's dismissal from employment occurred on 21st March, 2018 and the IRC entered judgment for the respondent on 7th August, 2023. The award of compensation was made on 4th May, 2024.
3. Counsel Tsabola, for the applicant, states in his affidavit, that on 11th August, 2025 he was served with a notice of *inter partes* hearing of an application by the respondent for an order to set aside an order of stay of execution of the judgment. The notice is exhibited and marked "PT 1".
4. Counsel states that during that time he was attending arbitration proceedings before Mr Marshal Chilenga as a result of which he did not have sufficient time to look at the application and to file a response.
5. Counsel states further that he communicated to counsel on the other side about his "predicament" and requested that the matter be adjourned. The prayer for an adjournment was made on his behalf by another counsel on a brief, but the High Court refused to grant the adjournment.
6. Later on, on 20th August, 2025 the High Court considered the applicant's *ex parte* application for an order to restore the order of stay of execution. The Judge before whom the application was placed dismissed it, stating as follows:

"I have read the application. No good reason has been given for the absence of Counsel on the appointed day of hearing. Counsel chose to attend arbitration proceedings at the expense of a Court case before a Judge. Application dismissed."

7. Thus, in essence, the application that was before the High Court was dismissed for counsel's disregard of the High Court proceeding in favour of arbitration proceedings, rather than on the merits of the application itself.
8. Following such dismissal, the applicant brought before this Court an *ex parte* application to restore the order of stay that was dismissed in the High Court and this Court granted an interim stay pending an *inter partes* hearing of the application. The order of stay is still subsisting.
9. The application is made under section 7 of the Supreme Court of Appeal Act as read with Order I rule 18 of what the applicant refers to throughout as the "Supreme Court Rules". The correct citation of the rules is Supreme Court of Appeal Rules. Counsel would do well to always cite legislation correctly.
10. Section 7 of the Act provides as follows:

"A single member of the Court may exercise any power vested in the Court not involving the hearing or determination of an appeal:

Provided that—

(a) ...

(b) in civil matters, any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.

11. Order I rule 18 of the Supreme Court of Appeal Rules provides as follows:

“Whenever an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below but, if the Court below refuses the application, the applicant shall be entitled to have the application determined by the Court.”

12. The applicant, according to counsel, is aggrieved by the order of the court below dismissing the application to restore the stay.

13. Counsel for the applicant alleges that the order setting aside the execution was obtained on a suppression and misrepresentation of material facts. But as already noted, and clear from paragraphs 7 and 8 hereof, the application was not considered and dismissed on the merits. However, even if that were to be the case, the applicant must bear the brunt of counsel’s inertia, having neither filed a response nor attended the proceeding in the court below.

14. Going back to the provisions of Order I rule 18 of the Supreme Court of Appeal Rules, specifically that an applicant shall be entitled to have their application determined by this Court if the court below will have refused the application, for an application to qualify for consideration by this Court under the concurrent jurisdiction provided for under that rule, two elements must obtain. The first is that the application must have first been brought in the court below. The second is that the application should have been refused in that court.

15. What was refused in the court below was a request for an adjournment and not the application for an order to restore the stay of execution. As is evident from the record in the court below, as well as the applicant’s own affidavit filed in this Court, the refusal by court to grant the adjournment resulted in the substantive application not being heard. It must follow, therefore, that the application to restore the order not having been considered cannot be said to have been refused such that this Court’s jurisdiction can be invoked under

Order I rule 18 of the Rules. The application before this Court is therefore incompetent as one of the prerequisite elements that triggers this Court's jurisdiction, i.e. refusal by the court below of the substantive application, is lacking. This application ought, therefore, to be dismissed.

16. If something must be said about the High Court's refusal to grant the adjournment, it is the apparent unsatisfactory diligence that counsel for the applicant has demonstrated in the prosecution of this matter post the IRC proceedings. The facts narrated in the affidavit sworn by counsel Constantino Mandala, for the respondent, in opposition to the applicant's present application, which facts are uncontroverted, speak to that position.
17. Counsel Mandala deposes that upon being dissatisfied with the decision of the IRC, the applicant applied, *ex parte*, for an order staying execution of the IRC judgment, pending determination of an appeal, which order was granted.
18. Counsel deposes further that since filing the Notice of Appeal counsel for the applicant neither filed skeletal arguments nor took any meaningful steps towards the expeditious prosecution of the appeal, as a result of which the respondent applied, *inter partes*, to have the stay order vacated. And despite being duly served with all relevant documents and being informed of the date of hearing before the High Court, counsel for the applicant did not himself attend, but instructed another counsel to seek the adjournment that was declined. It must be remembered that counsel for the applicant opted for arbitration over the High Court business.
19. Whether or not to grant an adjournment is in the discretion of the court before which the prayer is made. It is dependent on whether or not the grounds presented in support of the prayer are good and substantial. The manner in which the applicant has conducted itself in the present matter does not meet that threshold. It would seem that the applicant deliberately took steps to deprive the respondent of the fruits of her litigation by actively delaying the processes. The court should be the last institution to condone such conduct by a losing litigant.
20. I am satisfied that the present application lacks merit both legally and factually and decline to grant it. I accordingly dismiss it.
21. Consequently the order for stay of execution is hereby vacated.
22. With regard to costs, ordinarily the respondent, in whose favour this application has turned, would be entitled to costs. However, as it turned out

that the respondent flouted procedural protocols obtaining in this Court, such that her legal representative was denied audience, I exercise my discretion in ordering that each party bears their own costs.

Made in chambers at Blantyre this 12th day of November, 2025.

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HON. JUSTICE R. MBVUNDULA, J.A., S.C.